Filed 7/22/20 Church of God in Christ etc. v. Canaan Community Prayer etc. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CHURCH OF GOD IN CHRIST FIRST ECCLESIASTICAL JURISDICTION OF SOUTHERN CALIFORNIA, et al., Plaintiffs and Respondents, v. CANAAN COMMUNITY PRAYER CHAPEL, et al., Defendants and Appellants.	B296504 (Los Angeles County Super. Ct. No. BC645957)

APPEAL from an order of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Reversed and remanded with directions.

The Myers Law Group, Nicholas D. Myers, Clifford L. White, and Ivan U. Cisneros, for Defendants and Appellants.

Bangerter Frazier & Graff and William E. Frazier, for Plaintiffs and Respondents.

INTRODUCTION

A church sits on land in Wilmington, California. Church of God in Christ First Ecclesiastical Jurisdiction of Southern California, Inc. (Church of God), part of an international church whose headquarters is in Memphis, Tennessee, claims that one of its local churches owns the land and that Church of God has the right to operate the church. But Canaan Community Prayer Chapel (Canaan Community Chapel), a separate religious entity, and two of its members, Carolyn Simpson and Florence Anderson (collectively, the Canaan parties), claim they own the property. Church of God brought this action to establish who owns the property.

The litigation got off to a bad start. Church of God was not diligent in serving the summons and complaint, although it ultimately served two of the three defendants. Canaan Community Chapel, Simpson, and Anderson were not all diligent in responding to the complaint, and the trial court eventually entered their defaults and, ultimately, a default judgment against them. The Canaan parties filed motions to vacate the entry of defaults and the default judgment, all of which the trial court denied. The Canaan parties appeal from the default judgment, and we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Church of God Sues for Control of the Church Property*

Church of God filed this action on January 6, 2017. According to the allegations in the complaint, Church of God in Christ, Inc. is "an international hierarchical Church"

headquartered in Memphis, Tennessee.[1] Canaan Church of God in Christ, a local congregation of Church of God in Christ, Inc., allegedly owns the real property where the church in Wilmington is located and holds it in trust for the use and benefit of Church of God in Christ, Inc. Church of God in Christ First Ecclesiastical Jurisdiction of Southern California, Inc. (the entity we are calling Church of God in this opinion) is the "[e]cclesiastical jurisdiction of [Church of God in Christ, Inc.] regarding" the Wilmington property.

Church of God alleges Simpson and Anderson, former members of Canaan Church of God in Christ, incorporated Canaan Community Chapel for the purpose of wrongfully exercising control over the church property. Church of God alleges the Canaan parties wrongfully "terminate[d] and replace[d] the Pastor of Canaan Church of God in Christ," "[c]hanged the locks on the church" building, "physically blocked" Church of God's access to the church property, and "operat[ed] a new church" on the property. Church of God asserted causes of action for, among other things, declaratory relief, conversion, trespass, and ejectment. Church of God sought, among other remedies, an injunction enjoining the Canaan parties from "physically remaining on or returning to the [church] property" and from "managing . . . renting, leasing, transferring, encumbering, [or] disposing of any legal or beneficial interests" in the church property; an accounting of the finances relating to the church property; and monetary damages.

---

[1] Church of God in Christ, Inc. is not a party to this action.

B. *The Trial Court Enters the Defaults of the Canaan Parties and a Default Judgment Against Them*

On January 5, 2017, the day before Church of God filed the complaint, Simpson was personally served with a copy of the proposed complaint (but not a summons) and an ex parte application for a temporary restraining order. The next day Simpson appeared in court, without counsel, at a hearing on the application for a temporary restraining order. The trial court denied Church of God's application. Church of God never served Simpson with a summons or a conformed, file-stamped copy of the complaint.

Anderson and Canaan Community Chapel were not served with the summons and complaint until April 19, 2017 and June 27, 2017, respectively. Neither of them filed a timely response. Church of God requested, and the clerk of the court entered, the defaults of Anderson and Canaan Community Chapel on June 2, 2017 and August 18, 2017, respectively. Church of God also requested the default of Simpson on July 21, 2017, despite never having served her with the summons, and the clerk entered her default as well.

On August 24, 2017 the trial court held a case management conference and a hearing on an order to show cause why Church of God should not be sanctioned for failing to request entry of the Canaan parties' defaults.[2] Simpson attended the hearing, again unrepresented by counsel. The trial court advised her that she could not defend herself in the action unless Church of God

---

[2] Between May and July 2017 the trial court held three similar hearings on Church of God's failure to serve and request the entry of defaults of the Canaan parties.

stipulated to vacating her default or she filed a motion to vacate the entry of default. Counsel for Church of God did not inform the court Simpson had not been served with a summons.

Several weeks later, in September 2017, the Canaan parties, for the first time represented by counsel, contacted counsel for Church of God and asked him if his client would stipulate to set aside the defaults. Church of God did not stipulate.

On October 19, 2017 Simpson and Canaan Community Chapel filed motions under Code of Civil Procedure section 473, subdivision (b),[3] to vacate their defaults, as did Anderson a week later, on October 25, 2017. In her declaration, Simpson stated that she was the chief financial officer of Canaan Community Chapel and that in May 2017 she took responsibility for finding a lawyer to represent the Canaan parties, but was unable to obtain counsel until late September 2017. She stated she believed she was "doing everything in [her] power to prevent a default" by appearing at the January 2017 hearing on Church of God's application for a temporary restraining order and at the August 2017 case management conference and hearing on the order to show cause. Anderson, who was 88 years old at the time she filed her motion, stated in her declaration that she was never served with the complaint and that she believed "Simpson's efforts to seek counsel and appear at court hearings were enough to protect [her] interests" in the action. Both Simpson and Anderson stated they had never before been involved in civil litigation.

The trial court denied all three motions to vacate the defaults. The trial court ruled the defendants had not shown

---

[3] Undesignated statutory references are to the Code of Civil Procedure.

their defaults were "the result of mistake, surprise, or excusable neglect." The trial court also ruled that, despite Anderson's contention Church of God had not served her with the complaint, Church of God filed a proof of service "evidencing personal service on Anderson" on April 19, 2017.

It took over a year for Church of God to obtain a default judgment. On December 20, 2018, after a series of hearings, the trial court issued what it titled an "interlocutory order" and a judgment against the Canaan parties on all of Church of God's causes of action except conversion. The trial court "ejected" the Canaan parties from the church property; permanently enjoined the Canaan parties from "occupying or utilizing" the church property or from managing, renting, leasing, or transferring any interest in the property; ordered the Canaan parties to provide an accounting of Canaan Community Chapel's finances from December 1, 2016; and awarded Church of God $1,437 in costs.

The Canaan parties continued to fight for their opportunity to be heard. On January 23, 2019 they filed a motion to set aside the default judgment. The Canaan parties argued, among other grounds for relief, the trial court improperly determined title to real property without permitting the Canaan parties "to present any evidence that they were the title holders of the [p]roperty" and without holding a hearing with "[l]ive testimony and complete authentication of the underlying real property records." On February 19, 2019 the trial court denied the motion to vacate the judgment. The Canaan parties timely appealed from the default judgment.[4]

---

[4] On March 20, 2019, the day after the Canaan parties filed their notice of appeal, the trial court issued an "amended

DISCUSSION

A. *Applicable Law and Standard of Review*

Section 473, subdivision (b), provides a "court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Courts apply section 473 "liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; accord, *Murray & Murray v. Raissi Real Estate Development, LLC* (2015) 233 Cal.App.4th 379, 385 (*Murray & Murray*); *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 695.) "'[A]ny doubts in applying section 473 must be resolved in favor of the party seeking relief from default.'" (*Murray & Murray*, at p. 385; see *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980.)

"An order denying a motion to set aside a default" under section 473 "is appealable from the ensuing default judgment." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134; see Code Civ. Proc., § 906 ["[u]pon an appeal pursuant to Section 904.1 . . . the reviewing court may review . . . any intermediate ruling,

---

interlocutory order." Because we conclude the trial court erred in entering the defaults of the Canaan parties, we do not consider whether the court had jurisdiction to issue an order after the Canaan parties filed the notice of appeal. (See *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196 ["'the trial court is divested of' subject matter jurisdiction over any matter embraced in or affected by the appeal during the pendency of that appeal"].)

proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party"].)[5] We review an order granting or denying a motion to set aside a default for abuse of discretion. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257; *Lasalle*, at p. 134.) Nevertheless, "'because the law strongly favors trial and disposition on the merits,'" an "order denying a motion for relief under section 473 is . . . "'scrutinized more carefully than an order permitting trial on the

---

[5] As stated, the default judgment did not dispose of Church of God's cause of action for conversion. (See *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743 ["an appeal cannot be taken from a judgment that fails to complete the disposition of all the causes of action between the parties"]; *LAOSD Asbestos Cases* (2018) 28 Cal.App.5th 862, 876 ["Under the "'one final judgment'" rule, an appeal can be taken only from a judgment that completes the disposition of *all* the claims between the pertinent parties."].) Although nothing in the record indicates Church of God dismissed that cause of action, there is also no indication Church of God is pursuing it, and both sides assume the judgment resolved the entire case. (See *PV Little Italy, LLC v. MetroWork Condominium Assn.* (2012) 210 Cal.App.4th 132, 142-143 ["Whether a particular order constitutes an appealable injunction depends not on its title or the form of the order, but on "'the substance and effect of the adjudication.'"'"].) It is also unclear how the Canaan parties could ask the trial court at this time to enter judgment on that cause of action when they are in default. (See *In re Marriage of Olson* (2015) 238 Cal.App.4th 1458, 1463 ["a defendant in a civil case who has had a default judgment against her may not file pleadings or take further steps in the case while the default judgment remains in effect"].) In any event, the default judgment is appealable as an order granting injunctive relief. (See § 904.1, subd. (a)(6).)

merits.”’” (*Murray & Murray*, *supra*, 233 Cal.App.4th at p. 385; see *Rappleyea v. Campbell*, *supra*, 8 Cal.4th at p. 980.)

B. *The Trial Court Abused Its Discretion in Denying the Motions To Set Aside the Entries of Default*

1. *The Canaan Parties Promptly Moved To Set Aside the Defaults, and Church of God Did Not Show It Would Suffer Prejudice if the Court Granted Relief*

The Canaan parties diligently sought relief from their defaults, filing their motions to vacate the defaults well within the six-month deadline. (See § 473, subd. (b) [application for relief under section 473 “shall be made within a reasonable time, in no case exceeding six months”].) The clerk entered Anderson’s default on June 2, 2017, Simpson’s default on July 21, 2017, and Canaan Community Chapel’s default on August 18, 2017. All three defendants moved to set aside the defaults in October 2017. And Simpson was trying to hire a lawyer to represent the Canaan parties as early as May 2017, before Church of God even requested, and the clerk entered, the defaults in June, July, and August 2017. (Cf. *Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 807 [“in exercising its discretion the trial court may properly take into consideration a defendant’s lack of funds to obtain counsel in determining whether a motion to set aside a default was brought within a reasonable time”].)

In the meantime, while Simpson was trying to obtain counsel, she appeared for a case management conference on August 24, 2017, one month after the clerk entered her default (and only a few days after the clerk entered Canaan Community

Chapel's default). Upon learning at that case management conference she could not participate in the action unless the court set aside the defaults, Simpson retained counsel within a few weeks to represent the Canaan parties. Their new lawyer promptly contacted counsel for Church of God in September 2017 to request a stipulation to set aside the defaults and, when Church of God did not stipulate, immediately filed motions to set aside the defaults. (See *Mechling v. Asbestos Defendants* (2018) 29 Cal.App.5th 1241, 1244, 1248 [insurer diligently moved to set aside default judgment entered against a suspended corporation where the insurer retained counsel who, five months later, filed a motion to set aside default judgment]; cf. *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1184 [courts generally do not set aside defaults "where there were unexplained delays" of more than three months "after [the defaulting party's] full knowledge of the entry of the default"].)

On the issue of prejudice, Church of God did not present any evidence or even argue in the trial court that vacating the defaults would cause it any prejudice. Church of God argues for the first time on appeal it would have suffered prejudice because, had the court set aside the defaults, it would have taken longer for Church of God to get control of the church property. That is not the kind of delay, however, that qualifies as prejudice under section 473, subdivision (b). (See *Murray & Murray*, *supra*, 233 Cal.App.4th at p. 388 ["having to prove the allegations of [the] complaint" in a subsequent "'trial on the merits,'" rather than obtaining relief through a default judgment, is not prejudice under section 473, subdivision (b)]; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 740 ["Although it might be said that there is some prejudice inherent in any

protracted delay, appellant[s] . . . did not set forth substantial evidence of missing witnesses, evidence destroyed, and the like, to establish prejudice."].)

In light of their prompt efforts to obtain relief, and the fact that Church of God did not show it would suffer any prejudice, did the Canaan parties make the showing necessary to obtain relief from default? Simpson and the Canaan Community Chapel, convincingly; Anderson, barely.

2. *Simpson and Canaan Community Chapel Showed Their Defaults Were the Result of Excusable Neglect*

Simpson and Canaan Community Chapel argue the trial court should have set aside their defaults because the defaults were the result of excusable neglect. Where a party argues a default was the result of excusable neglect, "[t]he standard is whether '"a reasonably prudent person under the same or similar circumstances" might have made the same error.'" (*Solv-All v. Superior Court* (2005) 131 Cal.App.4th 1003, 1007; accord, *Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 929.) This is not an exacting standard. "Unless inexcusable neglect is clear, the policy favoring trial on the merits prevails," and "[d]oubts are resolved in favor of the application for relief from default . . . ." (*Elston v. City of Turlock*, *supra*, 38 Cal.3d at p. 235; accord, *Comunidad en Accion v. Los Angeles City Council* (2013) 219 Cal.App.4th 1116, 1134; *Alliance for Protection of Auburn Community Environment v. County of Placer* (2013) 215 Cal.App.4th 25, 30.)

Simpson and Canaan Community Chapel provided sufficient evidence of excusable neglect. This is not a case where,

after proper service, the defendants "merely laid the papers aside and did nothing." (*Daher v. American Pipe & Constr. Co.* (1968) 257 Cal.App.2d 816, 820; see, e.g., *id.* at pp. 816, 820-821 [no excusable neglect where the defendant, who was served with summons following a tractor accident, took no action and later claimed he thought the insurer would handle everything]; *Beall v. Munson* (1962) 204 Cal.App.2d 396, 398 [no excusable neglect where the defendant, who was served with summons, claimed he did not realize the court would enter default if he did not take any action].) Because Church of God never served Simpson with the summons, Simpson did not have formal notice that she had to "file with the court a written pleading in response to the complaint within 30 days" or that the court might enter her default judgment if she failed to do so. (§ 412.20, subd. (a).) Based on the limited information Church of God gave her about the case and about her duty to respond to the complaint, Simpson took reasonable efforts to protect her rights. After receiving Church of God's proposed complaint and application for a temporary restraining order on January 5, 2017, Simpson appeared in court the next day at the hearing and emerged victorious after the court denied the application. Given that Simpson defeated Church of God's request for a temporary restraining order and was not instructed until August 2017 that she had to file a responsive pleading, it was excusable, albeit erroneous, for her to believe she had done what she needed to do (and had done it successfully).

Moreover, the entry of the defaults of Simpson and Canaan Community Chapel were the result of Simpson's inability, despite reasonable efforts, to retain counsel. As Simpson explained, by the time Canaan Community Chapel was served with the

summons and complaint in June 2017, she was attempting to retain counsel. Because Canaan Community Chapel is a religious corporation, it could not file a responsive pleading until it obtained counsel. (See *Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 729; *Rogers v. Municipal Court* (1988) 197 Cal.App.3d 1314, 1318.) Refusing to set aside a corporation's default where an officer diligently searches for counsel after receiving a summons, the corporation promptly moves to set aside the default after retaining counsel, and the plaintiff would suffer no prejudice, is inconsistent with the strong public policy that the "law favors disposing of cases on their merits." (*Rappleyea v. Campbell, supra*, 8 Cal.4th at p. 980; see *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1148 [corporation is entitled to "a reasonable time to secure counsel"].)

Of course, unlike Canaan Community Chapel (and putting aside that Church of God never served Simpson with a summons), Simpson could have filed a responsive pleading, if anyone had told her to do so prior to August 24, 2017, when the court told her she was in default. But as a self-represented litigant who had never participated in civil litigation, her decision to seek counsel, rather than attempt to represent herself and risk making a mistake, was excusable and, as discussed, caused Church of God no prejudice or unfairness.

Finally, counsel for Church of God did not notify any of the Canaan parties he was going to request entry of their defaults before he filed the requests. And when counsel for the Canaan parties asked counsel for Church of God to stipulate to setting aside the defaults, not only did counsel for Church of God not agree, he did not even respond until after the Canaan parties

filed their motions. In light of this strategy, which raises ethical issues about the method of obtaining the defaults, and the irregular procedural circumstances of the case, the trial court abused its discretion in denying the motion by Simpson and Canaan Community Chapel to vacate the entry of their defaults. (See *Zamora v. Clayborn Contracting Group, Inc., supra*, 28 Cal.4th at p. 258 ["pursuant to the discretionary relief provision of section 473," where "no prejudice to the opposing party will ensue . . . the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary'"]; *Fasuyi v. Permatex, Inc.*, *supra*, 167 Cal.App.4th at p. 701 [that plaintiff's "counsel took the default without so much as a reminder, let alone a warning, about any responsive pleading" was relevant to whether the court should have vacated entry of default because "such warning is at the least an *ethical* obligation of counsel"]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ¶ 5:70 ["In the absence of a prior warning of default, courts are inclined to grant . . . § 473[, subd.] (b) motions to set aside defaults."].)

3. *Anderson Showed Her Default Was the Result of Excusable Neglect*

Anderson argues the entry of her default was the result of excusable neglect because she reasonably relied on Simpson to obtain counsel for her. Where the court enters a defendant's default because the defendant relied on a third party to defend him or her, "the question is whether the defendant was reasonably justified under the circumstances in his reliance or

whether his neglect to attend to the matter was inexcusable." (*Weitz v. Yankosky* (1966) 63 Cal. 2d 849, 855; see *Fasuyi v. Permatex, Inc.*, *supra*, 167 Cal.App.4th at p. 697.)

Whether the trial court abused its discretion in ruling Anderson was not reasonably justified in relying on Simpson to take care of responding to the complaint is a close question. Anderson was the first defendant Church of God served with the summons and complaint in April 2017. She never made an appearance prior to moving to set aside her default, and there is no evidence she ever conferred with Simpson about the status of the litigation. Nevertheless, under the circumstances, Anderson made a sufficient showing her reliance on Simpson was reasonably justified.

First, Anderson was at least 87 years old at the time Church of God served her with the summons and complaint, and she had never been involved in litigation. (See *Segal v. Southern California Rapid Transit Dist.* (1970) 12 Cal.App.3d 509, 512 [self-represented party who filed untimely claims against public entities was entitled to relief under Government Code sections 911.6 and 946.6, subdivision (c), because he was 78 years old and "inexperience[d] in legal matters].)[6] Second, the allegations against Anderson were essentially identical to the allegations against Simpson: Church of God alleged Anderson and Simpson

---

[6] Government Code sections 911.6 and 946.6, subdivision (c), like section 473, provide relief for "excusable neglect," and "[t]he showing required of a petitioner seeking leave to file a late claim on these grounds is the same as that required by . . . section 473 for relieving a party from default judgment." (*People ex rel. Dept. of Transportation v. Superior Court* (2003) 105 Cal.App.4th 39, 43.)

wrongfully operated a church together on property held in trust for Church of God. Third, Simpson was the chief financial officer of the church, and she began looking for counsel in May 2017, soon after Anderson was served with the summons and complaint. (Cf. *Desper v. King* (1967) 251 Cal.App.2d 659, 660-661 [truck driver justifiably relied on corporate employer to defend him in action arising from truck accident].) This evidence was sufficient, under the circumstances, to show Anderson was reasonably justified in relying on Simpson to find counsel for her, rather than file a responsive pleading. True, a more experienced litigant might have made more of an effort to keep apprised of her codefendant's attempts to obtain counsel, but this does not mean Anderson's failure to file a responsive pleading on her own was not "reasonably justified under the circumstances." (*Weitz v. Yankosky*, *supra*, 63 Cal.2d at p. 855.)

Finally, even if the court properly denied Anderson's motion to vacate entry of her default, the default judgment against her would have to be vacated until the court adjudicates the complaint against Simpson and Canaan Community Chapel. "Where there are two or more defendants and the defenses interposed by an answering defendant go to 'the whole right of the plaintiff to recover at all, as distinguished from his right to recover as against any particular defendant,'" and "'when such defenses prove successful,'" judgment "'must . . . be entered not only in favor of the answering defendant, but in favor of the defaulting defendant as well.'" (*Kooper v. King* (1961) 195 Cal.App.2d 621, 629; accord, *Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1211, fn. 21.) Here, Church of God's theory of recovery—that Canaan Church of God in Christ is the owner of the church property and holds the property in

trust for Church of God, Inc.—is the same against all three defendants. Therefore, because the court cannot enter judgment against Anderson until Church of God proves its causes of action against Simpson and Canaan Community Chapel, the default judgment against Anderson in any event must be reversed.

DISPOSITION

The judgment is reversed and the matter is remanded with directions for the trial court to vacate the entries of judgment, the default judgment, and the "interlocutory order"; to vacate the order denying the Canaan parties' motions to set aside the entries of default; and to enter a new order granting the motions to set aside the entries of default. Church of God's motion to strike the Canaan parties' reply brief or, in the alternative, to file a surreply brief is denied. The Canaan parties are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J. FEUER, J.